

INITIAL STATEMENT OF REASONS OVERVIEW/NON-CONTROLLING SUMMARY

REGULATION 1802 PLACE OF SALE AND USE FOR PURPOSES OF BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAXES

Regulation 1802 explains the allocation of sales and use tax revenue derived from sales that are subject to sales and use tax ordinances levied by the a city, county, and city and county (for the purposes of this discussion, hereinafter referred to generally as “city” or “cities”).

Specific Purpose

The purpose of the proposed amendments is to interpret, implement, and make specific Revenue and Taxation Code section 7202. These amendments are necessary to provide guidance to that portion of the public which is affected by this statute.

Factual Basis

Regulation 1802 discusses how revenue derived from sales and use taxes levied by the cities under the Bradley-Burns Uniform Local Sales and Use Tax (“Local Tax”) Law are allocated either to where the retailer exercises its privilege of selling (sales tax), or where the purchaser uses, stores, or otherwise consumes the property purchased (use tax). Subdivision (a) discusses the allocation of local sales tax revenues when a sales office of the retailer located in this state participates in the sale. Subdivision (b) discusses the allocation of local sales tax revenues when the retailer makes sales at locations other than its principal place of business.

Since the inception of the location tax system in 1956, the Board has concluded that when the retailer had no sales offices in the state (i.e., the sales where negotiated out of state) but shipped its goods from a stock of merchandise stored in the state, the location of the warehouse stock was regarded as the place of sale as to all items shipped from that location even if the retailer did not own the warehouse (the “warehouse rule”). The local sales tax revenue was distributed to that location through the medium of the county-wide pool system. Operative October 1, 1993, the Board amended subdivision (b)(5) to provide that local sales tax revenues derived from sales subject to the warehouse rule should be distributed directly to the location of the stock of goods rather than through the county-wide pool system. The amendment did not address what happened when the retailer did have sales offices in this state in addition to the stocks of goods.

On September 12, 2002, the Board held a hearing on the Petition of Proposed Local Tax Reallocation of the Cities of Fremont, Signal Hill, and Long Beach. One of the issues was the distribution of local sales tax revenues derived from sales subject to the warehouse rule when the location at which the retailer maintained the stock of goods also maintained a sales office for in-state sales for which the retailer also shipped or delivered the goods sold from the same warehouse. The in-state sales office did not, however, participate in the sales at issue. The Board concluded that the local sales tax revenue derived from these sales should be allocated to

the location of the warehouse from which the property sold was shipped or delivered, because the retailer was already directly allocating to the warehouse location local sales tax revenues derived from sales made by the sales office also located there. The Board thereupon amended subdivision (b)(5) to incorporate the decision in that case. The language of the amendment did not directly address the situation of how to distribute the local sales tax revenue derived from sales subject to the warehouse rule when the retailer had sales offices in this state that were not co-located at the same address as the stock of goods and did not participate in the sales.

On August 31, 2005, the Board concluded that it should be clarified that local sales tax revenue derived from sales subject to the warehouse rule should be distributed to the location of the stock of goods from which delivery is made in all cases. The Board has also concluded that placing the regulatory provisions governing such sales in subdivision (b), which generally addressed the issue of sales negotiated in this sales by specified types of sellers, caused confusion as to the basis for asserting local sales tax on sales subject to the warehouse rule. In that case, the participating jurisdiction where the stocks of goods is located asserts its jurisdiction based not on where the sales were negotiated but on the fact that the retailer's property is located in the jurisdiction. As a result, the Board concluded that subdivision (b)(5) should be deleted and its current language moved to a new subdivision to which is added language providing for direct allocation when the retailer has sales offices located in state in addition to the stock of goods.

New subdivision (c), TRANSACTIONS NEGOTIATED OUT OF STATE AND DELIVERED FROM THE RETAILER'S STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA, added; current subdivision (c) re-designated (d) accordingly. Subdivision (b)(5) is deleted; subdivisions (b)(6) and (7) re-designated (5) and (6) accordingly. Current language of former subdivision (b)(5) concerning the place of sale for out-of-state retailers that do not have a permanent place of business in California added as new subdivision (c)(1) with the operative date of October 1, 1993, deleted as no longer necessary. New subdivision (c)(2) added to provide for direct distribution of local sales tax revenues, specifically for sales negotiated out of state, to the location of the stock of goods when the retailer has sales offices in the state not co-located with the stock of goods and where there is no participation by the retailer's in state sales office.